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No. 94-12

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In The

Supreme Court of the United States

October Term, 1994

SEMINOLE TRIBE OF FLORIDA,

Petitioner,

vs.

STATE OF FLORIDA AND LAWTON CHILES, GOVERNOR OF FLORIDA,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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A RECENT DECISION OF THE TENTH CIRCUIT PRESENTS ADDITIONAL CONFLICT WITH THE DECISION BELOW

Subsequent to the filing of the Petition for Writ of Certiorari in this case, the United States Court of Appeals for the Tenth Circuit decided *Ponca Tribe of Oklahoma v. State of Oklahoma*, No. 92-6331, ___ F.3d ___, 1994 WL 476316 (10th Cir. 1994), which held that pursuant to the Indian Commerce Clause, Congress has the power to abrogate the states' Eleventh Amendment immunity:

> [W]e conclude that the Indian Commerce Clause empowers Congress to abrogate the states' Eleventh Amendment immunity and that IGRA constitutes an unequivocal expression of Congress' intent to do so.

1994 WL 476316 at * 9.

The Tenth Circuit noted express conflict with the Eleventh Circuit:

> We therefore decline to follow that portion of the Eleventh Circuit's recent ruling in *Seminole Tribe of Florida*, 11 F.3d at 1028, which concluded that Congress lacks the power to abrogate Eleventh Amendment immunity in IGRA.

Id. at * 14 n. 12.

Thus, the Tenth Circuit in *Ponca Tribe* joined the Eighth and Ninth Circuits, *Cheyenne River Sioux Tribe v. State of South Dakota*, 3 F.3d 273 (8th Cir. 1993); *Spokane Tribe v. Washington*,

28 F.3d 991 (9th Cir. 1994), in concluding that the Indian Commerce Clause permits Congress to abrogate states' Eleventh Amendment immunity. The Eighth Circuit conflict with the *Seminole Tribe* decision of the Eleventh Circuit was addressed in the *Seminole* Petition. (*See* Petition for Writ of Certiorari at p.7). The Ninth Circuit conflict occurred after the Petition was filed, and was noted in the response to the *Seminole* Petition.

Ponca Tribe presents further evidence of the substantial conflict among the circuits. The Tenth Circuit decision adds support for review in this case.

Respectfully submitted,

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